



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: MNSD, FFT
Landlord: MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on March 18, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on March 22, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or loss;
- an order that the Landlord be permitted to retain the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord by registered mail on March 22, 2019. The Tenants stated that the tracking information confirmed that the mailing was not received by the Landlord. The Tenants stated that they made an attempt at calling the Landlord to advise him

about the hearing, before posting their Application and documentary evidence to the Landlord's door. The Landlord confirmed that he works out of town and that he did not collect the Tenants mailing in time before it was returned to the Tenants by Canada Post. The Landlord confirmed receiving the Tenants Application and documentary evidence which had been posted to his door. The Landlord testified that he served the Tenants with his Application and documentary evidence by registered mail on June 14, 2019. The Tenants confirmed receipt. Pursuant to Section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order that the Landlord be permitted to retain the security deposit and pet damage deposit, pursuant to Section 38 and 72 of the *Act*?
3. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?
4. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on January 1, 2016. Rent in the amount of \$2,000.00 was due to the Landlord on the first of each month. The Tenants paid a security deposit in the amount of \$1,000.00, as well as a pet deposit in the amount of \$1,000.00 which the Landlord continues to hold. The tenancy ended on October 31, 2018. The parties took part in a move out condition inspection report on November 3, 2018 at which point the Tenants provided the Landlord with their forwarding address in writing.

Tenants' claim

The Tenants testified that they met the Landlord on November 3, 2018 to conduct the move out condition inspection. The Tenants stated that they did not agree with the Landlord's assessment of the condition of the rental unit, therefore, did not sign the condition inspection report. The Tenants stated that they provided the Landlord with their forwarding address in writing on the same date. The Tenants stated that they requested the return of their security deposit and did not agree to any deductions.

The Parties agreed that the Landlord submitted a previous application seeking a monetary order for damage to the rental unit and to retain the Tenants' deposits on November 12, 2018. The parties attended a hearing on March 15, 2019 at which point the arbitrator dismissed the Landlord's application with leave to reapply. The arbitrator specified in the decision that;

"I find that the landlord has failed to provide sufficient details in allowing the tenants an opportunity to properly respond to the application. As such, the landlord's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods."

The Tenants stated that they have not yet received their deposits from the Landlord; therefore, are seeking the return of double their deposits, in the amount of \$4,000.00.

Landlord's Claim

The Landlord monetary claim was set out on a monetary worksheet included in the Landlord's Application;

The Landlord is claiming that the Tenants or their pets caused damage to the hardwood floors located in the kitchen and hallway of the rental unit. The Landlord stated that at the end of the tenancy, he noticed that there were several scratches to the hardwood floors which had not been there at the start of the tenancy. The Landlord submitted the condition inspection report as well as pictures of the scratched floors in support. The Landlord stated that he received two quotes to repair the scratches on the hardwood floors, one in the amount of \$849.45 and the other was an estimate of the cost which varied from \$1,778.75 to \$2,556.10. The Landlord stated that he has not yet repaired the hardwood floors.

In response, the Tenants stated that there are no obvious scratches in the hardwood floors and that the minor scratches should be attributed to normal wear and tear. The Tenants stated that the hardwood floors were older and therefore the Tenants should not be held responsible for repairing them.

The Landlord is also claiming that the Tenants smoked in the rental unit which resulted in a strong smell of smoke throughout the rental unit. The Landlord stated that once the tenancy ended he listed his home for sale and that the Realtor as well as potential buyers all noted the strong odor of smoke in the rental unit. The Landlord obtained a quote in the amount of \$599.00 to \$699.00 depending on the number of applications required to remove the odor. The Landlord submitted a witness statement from the realtor in support.

In response, the Tenants stated that the rental unit had a smell of smoke prior to them taking possession. The Tenants stated that the Landlord's wife smoked in the rental unit prior to them moving in. The Tenants deny responsibility for causing the smell of smoke in the rental unit.

The Landlord is seeking \$277.35 in relation to the replacement of the oven control panel. The Landlord stated that he purchased a new oven for the Tenants in 2017. The Landlord stated that at the end of the tenancy he noticed several scratches to the front of the oven, which requires the replacement of the front panel. The Landlord submitted pictures as well as a quote for a new panel in support.

In response, the Tenants stated that they did not observe any scratches on the oven which would require replacement of the front panel. The Tenant acknowledged some scratches to the glass top surface of the stove.

The Landlord is also claiming \$38.60 in relation to a broken septic pipe and cap which had been broken. The Landlord stated that the cap and pipe appeared to have been hit by a lawnmower. The Landlord stated that the pipe was located near the rear patio area, which was the responsibility of the Tenants to maintain.

The Tenants stated that they do not recall hitting the septic pipe with the lawnmower and therefore do not agree with the deduction.

Lastly, the Landlord stated that the Tenants used the fire pit in the backyard to burn materials such as an oil filter which could be toxic. The Landlord stated that the fire pit may now be contaminated, therefore, he feels as though the fire pit should be removed

as a result. The Landlord has not yet removed the fire pit, however, suspects it would require the use of a small excavator at the cost of \$100.00 to \$150.00 per hour.

The Tenants stated that they only used the fire pit for wood burning and denied burning any other materials.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Tenants' Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, I accept that the parties agreed that the Tenants vacated the rental unit on October 31, 2018 and provided the Landlord with their forwarding address in writing on November 3, 2018. I find that after receiving the Tenants' forwarding address, the Landlord made an application for dispute resolution on November 12, 2018. The parties attended the previous hearing March 15, 2019 which resulted in the Landlord's application being dismissed with leave to reapply. I note that in the decision dated March 18, 2019, the Arbitrator indicated that "*Leave to reapply is not an extension of any applicable limitation periods.*"

In light of the above, I find that the Landlord should have returned the Tenants' security and pet deposit immediately following the results of the previous decision dated March 18, 2019. I find that the Landlord resubmitted his Application on March 22, 2019 which was outside of the 15 days permitted under the *Act*. As such, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord, or \$4,000.00.

Landlord's Claim

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage resulting from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is claiming that the Tenants or their pets caused damage to the hardwood floors located in the kitchen and hallway of the rental unit. The Landlord stated that he received two quotes to repair the scratches on the hardwood floors, one in the amount of \$849.45 and the other was an estimate of the cost which varied from \$1,778.75 to \$2,556.10. The Landlord stated that he has not yet repaired the hardwood floors.

The parties submitted a condition inspection report which indicates that the condition of the hardwood floor at the commencement of the tenancy was in good condition, as opposed to the condition at the end of the tenancy as being described as scratched. I find that the Landlord provided pictures of the scratches in support. I find that the Landlord has provided sufficient evidence to demonstrate an entitlement to a monetary amount to repair the hardwood floor. As the Landlord has not yet performed the repairs, I find that he is entitled to the lesser of the two quotes provided, or \$849.45.

The Landlord is also claiming that the Tenants smoked in the rental unit which resulted in a strong smell of smoke throughout the rental unit. The Landlord submitted an email from the Realtor which confirms the smell of smoke throughout the rental unit. The Landlord obtained a quote in the amount of \$599.00 to \$699.00 depending on the number of application required to remove the odor. The Tenants stated that the smell of smoke was there prior to their tenancy.

In this case, I find the Landlord has provided sufficient evidence to demonstrate that there is a smell of smoke in the rental unit. As there is no evidence before me to indicate that the smell of smoke was present at the start of the tenancy, I find that the Landlord is entitled to monetary compensation in the amount of \$599.00.

The Landlord is seeking \$277.35 in relation to the replacement of the oven control panel. The Landlord stated that he purchased a new oven for the Tenants in 2017. The Landlord stated that at the end of the tenancy he noticed several scratches to the front of the oven, which requires the replacement of the front panel. I find that it is more likely than not that the Tenants caused the scratches to the panel on the stove since the stove had been in new condition during the tenancy. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$277.35.

The Landlord is also claiming \$38.60 in relation to a broken septic pipe and cap which had been broken. The Landlord stated that the cap and pipe appeared to have been hit by a lawnmower. I find that the Landlord has provided insufficient evidence to support this claim, as it was not included in the condition inspection report, nor were there pictures or a receipt provided in support. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

Lastly, the Landlord stated that the Tenants used the fire pit in the backyard to burn materials such as an oil filter which could be toxic. The Landlord stated that the fire pit may now be contaminated, therefore, he feels as though the fire pit should be removed at the cost of \$100.00 to \$150.00 per hour. I find that the Landlord has provided insufficient evidence to support his claim that the fire pit is contaminated, requiring the removal of the fire pit. As such, I dismiss this portion of the Landlord's claim without leave to reapply.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,725.80, which has been calculated as follows:

Claim	Amount
Hardwood Floor Repair:	\$849.45
Smoke Odor Treatment:	\$599.00
Oven Control Panel:	\$277.35
TOTAL:	\$1,725.80

Set-off of Claims

The Tenants have demonstrated an entitlement to a monetary award of \$4,000.00 for the return of double their security and pet deposits. The Landlord has demonstrated an entitlement to a monetary award of \$1,725.80 for damage caused to the rental unit. As both parties have had some success, I decline to grant recovery of the filing fee to either party.

Setting of the parties' claims, and pursuant to section 67 of the Act, I grant the Tenants a monetary order in the amount of \$2,274.20 (\$4,000.00 - \$1,725.80).

Conclusion

Both parties have had success with their respective applications. After setting off the claims, the Tenants are granted a monetary order in the amount of \$2,274.20. The order may be filed in and enforced as an order of the Provincial Court of BC (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 09, 2019

Residential Tenancy Branch